



**SATELLITE
RECEIVERS LTD.**

SINCE 1980 AUTHORIZED DISTRIBUTOR FOR  General Instrument 



Corporate Office:
1740 Cofrin Drive
Green Bay, WI 54302
Phone: 414/432-5777
Fax: 414/432-1918

June 29, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RECEIVED
JUN 29 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

RE: 1995 Competition Report -- CS Docket No. 95-61

Dear Mr. Caton:

Please accept this letter (original plus four copies) as the comments of Satellite Receivers, Ltd. ("SRL") in response to the referenced Notice of Inquiry (NOI).

1. SRL is engaged in the home satellite dish (HSD) business in two respects, as a distributor of satellite television equipment and as an independent third party packager of programming. Our comments will address the status of the HSD industry primarily with respect to programming sales.

2. In 1986, cable television programmers such as HBO, Showtime, Turner Broadcasting and others began to encrypt or "scramble" their satellite signals to protect those signals and prevent unauthorized reception. Over the years, a substantial market has developed for the legitimate reception of those signals by those referred to as home satellite dish ("HSD") subscribers. Today, there are nearly 2.5 million HSD households in the United States subscribing to programming services. The annual revenue generated from the sale of C-band HSD programming services is estimated to be in the range of \$750 million to \$1 billion.

3. HSD households subscribe to the programming services directly through the programmers (e.g., HBO, CNN, Showtime), through one of a number of independent programming "packagers" -- such as SRL -- which act as distributors for the programmers,

No. of Copies rec'd 074
List A B C D E



Michigan Branch:
604 W. Seminary
Charlotte, MI 48813
Phone: 517/543-5656
Fax: 517/543-8202



Illinois Branch:
309 Wabash Ave.
Decatur, IL 62523
Phone: 217/428-0505
Fax: 217/428-0521



Ohio Branch:
2496 Creekway
Columbus, OH 43207
Phone: 614/492-1700
Fax: 614/492-0312

**Programming
Center**

Phone: 800/972-4117
Fax: 414/432-1244



Phone: 800/874-8876
Fax: 414/432-1918

through satellite retailers acting as agents for the programmers and distributors, or in some combination of those sources.

2
RECEIVED
JUN 29 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

4. While virtually all of the cable programmers have made their programming available to the HSD market (although, as noted below, there is a problem with access to some non-vertically integrated services), there has been a persistent problem relating to that programming. That problem is the imposition of wholesale rates for HSD distribution of such programming which are significantly higher than the rates charged by the programmers to cable and other distribution technologies. In the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act") Congress took steps to address this problem. However, as reflected below, the remedy has not been totally effective and price discrimination continues to exist.

5. SRL would like the Commission to make Congress aware of the fact the strongest weapon available to independent distributors for price discrimination has, perhaps, been taken from our hands by the Commission. In the Memorandum Opinion and Order on Reconsideration of the First Report and Order, MM Docket No. 92-265 (December 9, 1994) ("Recon. Order"), the Commission stated that while it had the authority to award damages in price discrimination actions, that they would not create such a remedy "at this time".

6. It is programmers' belief, therefore, that they can continue to impose unjustified discriminatory rates with impunity and retain the overpayments without liability. As a distributor, SRL can file a complaint against a programmer, prove that the programmer's rates are not justified, pay the unjustified differentials for months or years and yet, possibly, not recover one cent of the overpayment because of the Recon. Order. It is vitally important that the Commission clarify and, to the extent necessary, revise the Recon. Order to make it clear that it was not the Commission's intent to preclude the recovery of unjustified overpayments.

7. In recent months another problem has arisen with respect to programming distribution which threatens the viability of the independent packagers. Several of the programmers sell not only their own proprietary services to the HSD market, but also offer packages containing all or nearly all of the programming services in the market. In other words, these programmer-affiliated packagers compete with the independent distributors, selling directly to consumers and selling through local satellite dealers. As will be seen from the material contained in Exhibit A, the programmer packagers are selling their packagers at retail and to

dealers at prices which are lower than the *wholesale* costs incurred by the independent packagers.

8. In the view of many of the independent distributors, this situation exists because the programmer affiliated packagers are able to subsidize the price of their packages through the margins built in to their own services.

9. The independents are, therefore, facing threats to their businesses from two directions: first, they are compelled to purchase programming at rates which are frequently two to five times the rate paid by cable and other competing technologies and, second, they are competing with the packages of programming vendors which are subsidized by the programmers' internal margins and by the discriminatory rates being paid by the independent distributors.

10. Exhibit A contains cost and published pricing data related to satellite television programming distributed in the home satellite television marketplace. The paper is divided into two parts. Part one contains information and data on packages which are offered to consumers and dealers by packagers which are affiliated with programming suppliers. Part two contains general pricing data on sample programming services of both vertically integrated and non-vertically programmers and compares that pricing to prices paid by programming vendors using technology other than C-band home satellite.

11. In addition to pricing problems, some non-vertically integrated programmers have refused to provide access to their programming by SRL and other independent distributors. The most glaring example of this is ESPN and the NFL. Despite years of effort, both the NFL and ESPN has steadfastly refused to offer a distribution agreement to SRL and, as a result, we must purchase the ESPN service at a retail rate from another distributor and sell it at no profit or at a loss and, with respect to the NFL Sunday Ticket, we are simply precluded from providing that to our customers.

12. The Commission has asked a number of questions relating to section 19 of the 1992 Cable Act. (NOI at para. 90.). Following are SRL's responses to some of those questions:

- (a) How have the program access rules affected the number of and competition among MVPDs?

More than the program access rules, the number of and competition among MVPDs in the HSD market are being affected mostly by the practice of programming-affiliated packagers offering their packages at retail for less than the cost an independent distributor pays at wholesale. If programmer-packagers are allowed to continue their pricing practices many independents may be driven from the market.

(b) Are MVPDs now able to get programming that was previously unavailable?

Generally, all programming has been "available", even before the 1992 Act. The problem is that programming prices for HSD distributors remain high relative to other technologies and, with respect to non-vertically integrated services such as ESPN and the NFL, those services are "available" to the market, but not available through all distributors.

(c) Is this programming available on nondiscriminatory terms? Have the program access rules had an effect on the price and terms offered to alternative MVPDs?

Some programming is available on nondiscriminatory terms. The Discovery Channel, Nashville Network, Country Music Television and The Family Channel are examples of services that offer rates comparable to their cable rates. Other services have lowered their rates somewhat but still remain well above their cable rates. Still others persist in charging rates that have changed little since passage of the 1992 Act and that are outrageously higher than their cable rates. These programmers are simply milking a "cash cow" and will do so until the Commission makes it clear that they will be compelled to rebate overcharges retroactively.

(d) Are there differences in the treatment of the various distribution technologies with respect to access?

It appears that DBS providers are being granted access to all services. Some HSD providers still cannot gain access to some non-vertically integrated services.

(e) Has the FCC complaint process worked to ensure that programming is available to alternative MVPDs?

Again, "availability" with respect to services covered by the 1992 Act, that is, vertically integrated services is not necessarily the key issue. What the FCC complaint process cannot resolve is (a) access to non-vertically programming services such as ESPN and (b) price discrimination by

non-vertically integrated programmers. The complaint process with respect to price discrimination vis a vis vertically integrated programmers and satellite carriers has not been completed so it cannot be judged at this time.

- (h) Should the program access rules be extended to non-vertically integrated program providers?

There is no question that the rules should be so extended. Only then will independent HSD distributors have fair access assured to all programming.

13. The independent C-band HSD distributor is being placed at competitive disadvantages in two respect. First, it is disadvantaged against cable operators who generally pay rates on basic services at levels which are about one-third the rate the HSD distributor must pay. Second, in competing against programming affiliated packagers for dealers and consumers, the HSD independent distributor faces pricing which is, apparently, subsidized by the programmers' own affiliated services, resulting in pricing which the independent cannot match. Several steps can be undertaken to address these situations:

- (a) The Federal Communications Commission must give full attention to proceedings involving price discrimination by vertically integrated programmers and satellite carriers (i.e., those subject to the 1993 Act) and provide maximum relief to HSD distributors that have incurred unjustified expenses because of such discrimination. It is, therefore, imperative that the Commission make it clear that in cases involving unjustified rate differentials, rate rollbacks will be retroactive;

- (b) Congress must recognize that vertical integration is not necessarily a prerequisite to cause a programmer to act in a discriminatory manner. Discriminatory pricing is not an activity exclusively within the domain of those programmers that are vertically related to cable operators. The Commission should be given the power to act, on a case by case basis, when discrimination exists, irrespective of vertical ownership;

- (c) The Commission must examine the packaging practices of programming affiliated packagers. In those situations where programming packages are being subsidized by the sale of proprietary programming services, such activities must be recognized as unfair practices in violation of Section 628(b) of the Communications Act.

(d) In those situations where a programming vendor is selling to an affiliated packager at rates which permit the creation and sale of programming packages for retail and dealer sales at prices which are below an independent distributor's wholesale cost, the Commission should entertain a complaint for price discrimination under its rules.

Thank you for your interest in and consideration of these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "D. R. Charles", with a stylized flourish at the end.

David R. Charles
Chairman & C.E.O.
Satellite Receivers, Ltd.

EXHIBIT A

PART 1 - PROGRAMMER AFFILIATED PACKAGES:

1. The packages examined here are those of five packagers which are affiliated with programming suppliers. In four of the cases (HBO, Showtime, Turner and Netlink), the companies involved are also "vertically integrated" with cable operators. The pricing of the five packages (retail and dealer prices) is compared to the average wholesale cost of the same programming services constituting each package, as such cost is incurred by independent distributors.

2. In all but one case, the programmer-affiliated packagers sell their packages to dealers at prices which are less than the wholesale cost of those same services as paid by HSD distributors. In two of the cases, the programmer-affiliated packages are even offered at retail for less than an HSD distributor's cost. Satellite Receivers competes with the programming affiliated packagers at both the dealer and the consumer level. As a result of the offering of services by the programming-affiliated packagers at subsidized rates, independent distributors, such as Satellite Receivers, have suffered lost sales and, in some cases, have seen long standing relationships with dealers come to end. The independent distributors are unable to compete with such pricing.

3. SRL does not believe that the ability of programmer-affiliated packagers to offer these packages at significantly lower prices to both dealers and consumers results from volume discounts. Even if there were significant differences in subscriber volume, there is not enough difference between the highest and lowest rates for the individual services (based on standard rate cards) to explain the difference between the programmer-affiliated package pricing and the independent distributors' costs.

4. The packages and pricing are a snapshot taken as of March, 1995. The make-up and pricing of the packages change on a regular basis.

5. In every case, the programmer-affiliated packages are sold at retail and/or to local dealers for less than the cost incurred by national independent distributors when purchasing the same services at wholesale.

1. TCI's NETLINK ONE-STOP (26 Services including Netlink's Denver 5 and Atlantic 3 services)

Retail Annual Price: \$181.50 Dealer Cost: \$163.00

Range of Independent Distributor Cost for same services: \$180.00 - \$195.00

2(a). TIME WARNER's HBO SUPERPAK PLUS (42 Services including Time Warner's HBO, Cinemax, and Comedy Central)

Retail Annual Price: \$325.00 Dealer Cost: \$260.00¹

Range of Independent Distributor Cost for same services: \$325.00 - \$340.00

2(b). HBO SUPERPAK (32 Services)

Retail Annual Price: \$284.00 Dealer Cost: \$229.00

Range of Independent Distributor Cost for same services: \$260.00 - \$290.00

3. VIACOM's SHOWTIME ULTRAVIEW (30 Services including Showtime, The Movie Channel, Flix, MTV, VH-1, Nickelodeon, and Comedy Central)

Retail Annual Price: \$329.95 Dealer Cost: \$286.95

Range of Independent Distributor Cost for same services*: \$310.00 - \$340.00

(*Does not include \$32 TVN Bonus which is contained in Showtime Package)

4. TURNER BASIC (17 Services including TBS' TNT, CNN, Headline News, CNN International, Cartoon, WTBS and Turner Classic Movies)

Retail Annual Price: \$99.00 Dealer Cost: \$75.00

Range of Independent Distributor Cost for same services: \$100.00 - \$115.00

5. United Video's SUPERSTAR SUPERVIEW (25 Services including UV's WGN, WPIX, KTLA, and KTVT)

Retail Annual Price: \$175.00 Dealer Cost: \$155.00

Range of Independent Distributor Cost for same services: \$155.00 - \$169.00

¹ HBO and Showtime dealer costs are based on published rebate/commissions. Actual dealer prices may be lower for higher volume dealers. However, in no case would a dealer's volume equal that of an independent distributor.

Exhibit A

PART 2. Cable Television Programming - HSD vs. Cable Wholesale Rates

1. The 1992 Act sought to address problems of unfair price discrimination in the wholesale rates paid by competing distribution technologies for cable programming services. Basically, the 1992 Act provides that a programmer which is vertically integrated with a cable system operator cannot engage in unfair practices or discriminate in the prices it charges alternative technologies except where such price differentials are justified by reasonable cost factors. In addition to vertically integrated programmers, satellite carriers of superstations and network signals are also subject to the 1992 Act. The anti-discrimination provisions of the 1992 Act are currently being tested in proceedings brought before the Federal Communications Commission. Whether or not those provisions will provide adequate relief remains to be seen.

2. A fundamental problem with the 1992 Act is the fact that it does not encompass all programmers. A number of programmers which are not covered by the 1992 Act are charging wholesale rates for HSD that are significantly higher than the rates they charge to cable operators -- and doing so with complete impunity. The number of integrated programmers which are covered by the Act is also decreasing. In recent months, consolidation of the cable industry has had the result of placing a number of programmers outside the scope of the 1992 Act.

3. The chart on the following page is broken down between programmers covered by the 1992 Act and those which are not covered. The chart also shows a typical HSD rate for each service and the rate which is believed to be charged to small cable systems, in other words, the highest cable rate. If comparisons were to be made between an HSD distributor having 200,000 subscribers and a cable operator with 200,000 subscribers, the differentials would be even greater.

Sample: Vertically Integrated Services and Satellite Carriers:

PROGRAMMING SERVICES:

American Movie Classics, Bravo, CNN/HN, WGN, MTV/VH-1, Comedy Central, Nickelodeon

HSD COST²

\$4.67/Mo.

CABLE COST³

\$2.00/Mo.

Average price per service for HSD = \$0.667

Average price per service for cable = \$0.27

Differential = 245%

Sample: Non-Vertically Integrated Services

PROGRAMMING SERVICES: ESPN, Weather Channel, Travel Channel, Lifetime, USA, CNBC, A&E

HSD COST

\$3.90/Mo.

CABLE COST

\$1.53/Mo.

Average price per service for HSD = \$0.557

Average price per service for cable = \$0.219

Differential = 254%

² HSD Rates are those typical to an independent HSD distributor. HSD rates will vary based on volume, penetration, and package structure. The HSD rates set forth here are neither the highest nor the lowest possible.

³ Cable Rates are 1995 Top of Rate Card per Cable Television Programming, Paul Kagan Associates, April 30, 1993.